IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10906 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI PARSOTTAMBHAI MACHHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.Uday Bhatt, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/11/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner under Article 226 of the Constitution of India challenging the order of detention dated 19.7.2000 passed by the District Magistrate, Broach in exercise of the powers conferred upon him by section 3(1) of Gujarat Prevention of Anti

Social Activities ACt 1985(PASA Act for short). The petitioner came to be detained on the same day in pursuance of the said order dated 19.7.2000. the grounds placed on record for the detention indicates that 4 crimes under Bombay Prohibition Act under sections 66(1), 65(a)(e) and 116 were registered against the petitioner from 17.1.2000 to 17.5.2000 before Broach City A Division Police Station. The detaining authority took into consideration the papers of investigation in the above said crimes and statements of 3 witnesses who in assurance of anonymity ventured to offer statements against the petitioner. From the above material, the detaining authority reached to a subjective satisfaction that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act.

#. Learned advocate Ms. Subhadhra Patel for the petitioner and Mr. Uday Bhatt, learned AGP for the respondents were heard.

#. The petitioner raised many grounds against the detention order. From the rival contentions and the scrutiny of the record it appears that the order impugned is required to be set aside on the following two grounds.

(i) In Zubedabibi Rasidkhan Pathn vs. State of Gujarat reported in 1995(2) GLR 1134 the Division Bench of this Court has established that the detaining authority under the PASA Act was required to consider less drastic remedy available to the detaining authority. Non consideration of such less drastic remedy would amount to non application of mind qua fact of the case. In that case the court observed that the remedy of cancelling the bail under section 437(5) Cr.P.C. was available to the detaining authority which was not considered by it. The provision is very wide in important and intent. The order was vitiated on this ground of non application of mind. This view was endorsed by this court in the matter of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate, in LPA No.1056 of 1999 decided on 15.9.2000. In this case also in all the 4 cases registered against the petitioner. The authority, however, could not consider or resort to proceedings under section 437(5) of Cr.P.C. for the cancellation of bail. The order of detention is therefore, vitiated for non application of mind by the detaining authority qua the facts of the case.

(ii) The detaining authority relied upon the investigation papers in the crimes registered against the petitioner. This necessarily goes to indicate that the detaining authority relied upon the statements recorded under section 161 Cr.P.C. in these crimes registered against the petitioner. Some of the important statements of witnesses who are police personnel were not supplied to the petitioner along with the det ention order. The petitioner also asked for the copies vide his representation dated 24-8-2000 referred to Government. However, no papers as asked for were supplied or provided to the petitioner. Ultimately it has resulted in violation of Article 22(5) of the Constitution of India to make effective representation against the detention order.

#. For the above said two reasons the detention order passed against the petitioner is required to be quashed and set aside because the same is without proper application of mind qua the facts of the case.

#. In this view of the matter the detention order dated 19.7.2000 passed by the respondent no.2 District Magistrate, Broach against the petitioner is hereby ordered to be quashed and set aside. The petitioner-Bharatbhai Parsottambhai Machhi is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct Service permitted.

(J.R.Vora.J)

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